APPENDICES

In the

Supreme Court, U. S.
FILED
MAY 9 1977
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

No. 76-1271

THOMAS WARNER HOOPES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

THOMAS W. HOOPES
2559 Keddington Lane
Salt Lake City, Utah 84117
Petitioner Pro se

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APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 76-1197

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. THOMAS WARNER HOOPES, Defendant-Appellant	FILED Dec. 3, 1976 Howard K. Phillips, Clerk Appeal from the United States District Court for the District of Utah, Central Division (D.C. No. Cr-75-79)

Submitted on briefs.

Ramon M. Child, United States Attorney, and Rodney G. Snow, Assistant United States Attorney, Salt Lake City, Utah for Plaintiff-Appellee.

David J. Knowlton, Ogden, Utah, for Defendant-Appellant.

Before PICKETT, HILL and McWILLIAMS, Circuit Judges.

PICKETT, Circuit Judge.

Appellant Hoopes was accused in a two count Information of violating 26 U.S.C. §7203 by failing to file federal income tax returns for the years 1971 and 1972. Following

a jury conviction he was sentenced on each count to imprisonment for a period of one year and to pay a fine of $10,000, the sentences to run consecutively. On appeal it is urged only that the trial court erred in refusing to instruct the jury on the theory of defense, which was that Hoopes had failed to file his 1971 and 1972 income tax returns relying in good faith upon the advice of attorneys.

The law is settled that in criminal cases a defendant is entitled to adequate instructions to the jury on his theory of defense, provided there is evidence to reasonably support the theory. Speers v. United States, 387 F.2d 698 (10th Cir.), cert. denied, 391 U.S. 956 (1967); Beck v. United States, 305 F.2d 595 (10th Cir.), cert. denied, 371 U.S. 890 (1962). We are satisfied in this case that the evidence is not such as to reasonably support the theory that Hoopes, in failing to file his 1971 and 1972 income tax returns, was in good faith relying upon the advice of attorneys. A fair analysis of the evidence is that Hoopes, after years of concern, agitation, and study of the federal income tax laws and other governmental fiscal activities, decided on his own the course of action he would take, as he in effect testified, to bring the matter to a head. His conduct was an open defiance of the law and his claim that he acted in good faith upon advice of attorneys was obviously an afterthought.

For a number of years Hoopes had been a practicing dentist in Salt Lake City, Utah, with substantial yearly income. During those years he had become disenchanted with the fiscal policies of the United States and was very critical of the income tax law and procedures of the Internal Revenue Service. He discussed those matters with many people and accumulated and read a mass of literature on the subjects. For the years 1968, 1969, and 1970 he filed Form 1040 income tax returns with the assistance of an accountant and paid the taxes due under protest. No civil litigation resulted from those protests. For the year 1971 Hoopes adopted a

new course of action by filing a 1040 income tax form containing only his name and address. Across the form was written, "UNDER PROTEST I PLEAD THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION; ALSO ARTICLE 1-SEC. 8, 10, THE FIRST, FOURTH, SEVENTH, TENTH AND FOURTEENTH AMENDMENTS TO SAME." The identical procedure was followed in 1972 when a 1040 from was filed, with some variation in the writing across the face of the form.[1] Regarding his reason for filing the 1040 form without any information concerning his income, Hoopes testified:

> I simply wanted to register a protest and get the Internal Revenue Service to face me in civil litigation whereby we could resolve some type of a disagreement. I felt they were transgressing upon the citizens' rights.

A special agent of the Internal Revenue Service interviewed Hoopes with reference to his 1971 return. The result of the interview was mostly a dissertation by Hoopes on his constitutional rights and ideological beliefs. He refused to allow the agent access to his records for the purpose of determining his income, stating that the refusal was the result of his belief that under the Constitution he was not required to divulge that information.[2] During the interview Hoopes did

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[1] In a similar case, United States v. Porth, 426 F.2d 519, 523 (10 Cir.), cert. denied, 400 U.S. 824 (1970), we held:

> . . . A taxpayer's return which does not contain any information relating to the taxpayer's income from which the tax can be computed is not a return within the meaning of the Internal Revenue Code or the regulations adopted by the Commissioner. . . .

not claim that he was relying on the advice of an attorney when he filed the 1971 income tax return in blank. The Internal Revenue Service determined the income by other means and it is not contended that tax returns were not due for the years 1971 and 1972.

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[2]With reference to this interview, the agent testified as follows:

> A. But I explained the penalty, then I further explained the penalties for not filing a tax return.
>
> Q. What did Dr. Hoopes state to you?
>
> A. Again he stated he was well aware of the law and that he had filed the letter with the Internal Revenue Service and he referred to it as a letter and that was all he was going to file.
>
> Q. Did he state anything to you why he wasn't going to file or why he only filed the letter?
>
> A. We went into a long discussion with regards to the Constitution and his belief on the Constitution that the Internal Revenue Code was in violation of the Constitution and that any law in violation of the Constitution did now have to be obeyed.
>
> Q. What did you explain to him in that regard?
>
> A. Well, as I said, we discussed for some time on this and I told him that I wasn't there to discuss or argue ideologies necessarily but that I was assigned to the investigation to investigate his tax return. I attempted to get access to his records so that we could file a correct tax return and these were denied me.

With reference to his consultation with attorneys on his tax matters, Hoopes testified that he discussed the matter with three lawyers, Robert Matheson of Salt Lake City, Utah and William Drexler and Jerome Daly, both of Minnesota. Of these, only Mr. Matheson was a practicing attorney. He advised Hoopes that his plan of action "was a precarious course to follow . . . . because there were many cases operating against that." Hoopes said he attended three lectures given by Drexler in 1972, 1973, and 1974 on the subject of the federal income tax. In addition to listening to the lectures, Hoopes discussed the tax matter with him on several occasions. At least two of these meetings were after Hoopes had decided on his course of action. Apparently Drexler advised him that his course of action was "proper." As to Jerome Daly, Hoopes attended one lecture given by him in May of 1972 in which Daly discussed a court case he had won in Minnesota concerning the value of the dollar. Hoopes did not recall that Daly had mentioned income tax.

Over the years Hoopes had accumulated a mass of literature, court decisions, and other material which he thought supported his ideologies. He introduced in evidence 490 pages of that printed material, most of which was irrelevant to the issues of the case. It did, however, contain publications which disclosed that Drexler and Daly were tax protestors who had been disbarred from the practice of law in Minnesota. Each had been prosecuted for the same offense for which Hoopes was being tried. Drexler was acquitted, and Daly was convicted and his conviction affirmed. United States v. Daly, 481 F.2d 28 (8th Cir.), cert. denied, 414 U.S. 1064 (1973). In concluding his testimony, Hoopes stated that he now recognized that he might have made a "serious mistake" in following the course he did.

Hoopes knew, as do millions of other American citizens, that the law required him to file income tax returns. The law books are replete with criminal cases involving the wil-

lful failure to file federal income tax returns. Years ago, the Supreme Court, after recognizing the rule that it is a defense in a criminal action if the accused honestly and in good faith acted on advice of a lawyer, stated: "But, on the other hand, no man can willfully and knowingly violate the law and excuse himself from the consequences thereof by pleading that he followed the advice of counsel." Williamson v. United States, 207 U.S. 425, 453 (1908). In an analogous situation, the Fourth Circuit use substantially the same language. See United States v. Painter, 314 F.2d 939, 943, cert. denied, 374 U.S. 831 (1963). Furthermore, one of the essential elements of the offense charged is wilfulness on the part of the accused. In defining wilfulness, the court instructed the jury as follows:

> The specific intent of wilfulness -- I must tell you about that -- the specific intent of wilfulness is an essential element of the crime for failure to file an income tax return. The word "wilful" as used in this statute means voluntarily, purposefully, deliberately and intentionally as distinguished from accidental, inadvertent or negligent. Mere negligence, even gross negligence, is not sufficient to constitute wilfulness. You will note that the failure to act as charged in the two Counts of the Information is alleged to have been wilful. A failure to act is wilful if voluntary and purposeful and with the specific intent to fail to do what the law requires to be done, that is to say, with the bad purpose to disobey or disregard the law. I charge you that the only bad purpose necessary for the government to prove in this case is the deliberate intention not to file tax returns, which the defendant knew he was required to file, at the time he was required by law to file them.

Compare United States v. Pomponio, ___ U.S.___ (Octo-

The court also fully instructed the jury on the necessity of proving intent. Considering the instructions as a whole, the question of good faith was adequately included and there was no prejudicial error in the failure of the court to give a separate instruction on the subject. Speers v. United States, supra; Beck v. United States, supra. See also United States v. Stone, 431 F.2d 1286 (5th Cir. 1970), cert. denied, 401 U.S. 912 (1971); New England Enterprises, Inc. v. United States, 400 F.2d 58 (1st Cir. 1968), cert. denied, 393 U.S. 1036 (1969).

AFFIRMED.

JANUARY TERM - February 3, 1977

Before The Honorable David T. Lewis, Chief Judge,
The Honorable John C. Pickett, Senior Circuit Judge,
The Honorable Delmas C. Hill,
The Honorable Oliver Seth,
The Honorable William J. Holloway, Jr.,
The Honorable Robert H. McWilliams,
The Honorable James E. Barrett and
The Honorable William E. Doyle, Circuit Judges

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
vs.) No. 76-1197
)
THOMAS WARNER HOOPES,)
Defendant-Appellant.)

This matter comes on for consideration of the appellant's petition for rehearing and suggestion for rehearing en banc in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied by Circuit Judges Pickett, Hill and McWilliams to whom the case was submitted.

The petition for rehearing having been denied by the original panel to whom the case was submitted, and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

HOWARD K. PHILLIPS, Clerk
By Robert L. Hoecker
Chief Deputy Clerk

AFFIDAVIT
IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI

STATE OF UTAH
SS No. 76-1271
COUNTY OF SALT LAKE

Having been first duly sworn, Thomas W. Hoopes, deposes and states as follows:

1. I am the Defendant-Petitioner in the above entitled proceeding.

2. Prior to, and during the trial in the lower court, prior to the appeal and submission of the appeal brief, prior to the judgment in the appeals court, I instructed, I demanded my attorney, David Knowlton, include arguments that most accurately represented my intent and defense (Garner v. U.S. 96 S. Ct. 1178 (1976), United States v. Sullivan, 274 U.S. 259 (1927), et al) to the charge.

3. Never once did he argue my case properly, neither did he follow my instruction as to the true facts, nor challenge the witnesses whose testimony was not correct -- he doggedly pursued his own pet theory of defense!

4. Because of these violations of our agreement entered into for him to represent me in this case (76-1179), I severed the relationship, effective December 11, 1976.

5. Following this severance, as witnessed by an individual who accompanied me, Knowlton, contrary to my instruction, filed for a hearing to reduce the sentence. I reaffirmed the severance on December 15th, when I demanded that he withdraw his unauthorized motion. He assured me that he would appear personally to effect the withdrawal,

prior to the hearing -- he did not do so! He permitted the hearing to be called on December 17, 1976 without making an appearance. I did not appear because of his assurance that he would withdraw the motion.

Knowlton mailed his motion of withdrawal of counsel (Case No. 76-1197) to the circuit court on December 12, 1976. He filed his withdrawal of motion to reduce sentence and the notice of withdrawal of counsel on December 28, 1976 -- ELEVEN DAYS AFTER THE HEARING! This was just the excuse Judge Ritter needed to prejudicially strike out at me once again! (See the quote in the petition).

6. The IRS is wholly inconsistent with, and contradictory to the U.S. Supreme Court's decisions! The agent, Tim Elison, read the Miranda warning to me when he began his "investigation" -- but then proceeded to disregard the fact that I asserted the 5th Amendment privilege. The IRS proceeded to charge me with "wilful failure to file" (26 U.S.C. § 7203) WITHOUT ANY HEARINGS BEFORE A TRIBUNAL FOR A RULING ON THE VALIDITY OF MY ASSERTION!

7. Everyone is presumed to know the law. However, I notified the IRS of the application of Sullivan and Garner to my assertion and they are without excuse for not seeking a tribunal's decision.

8. The IRS has overstepped its legal bounds and is creating its own empire, acting as its own judge, even though it is part of the Executive branch of government and can in no way rightfully exercise a power of the Judiciary.

9. If the IRS is permitted to maintain this perverted charge the Supreme Court will cease to be "supreme".

10. The trial court, Judge Willis W. Ritter, while a

party to an action brought by the defendant in the Federal Court, did sit and rule in his own behalf! (C 76-3).

11. The trial court refused to read the defendant's instructions in charging the jury, manipulated the jury by telling them the defendant was guilty of wilfulness, precluding an acquittal!

12. Judge Ritter, who is overturned by the Tenth Circuit approximately eighty-percent of the time, even deleted one portion of the prosecution's instructions to the jury that would have permitted the jury to see the possibility that the defendant was justified in his actions. He also withheld the proper definition of "wilfulness", and any mention of Garner and Sullivan defense!

13. I informed the Tenth Circuit Court of these facts in an affidavit submitted with my petition for rehearing. They totally ignored this miscarriage and sumarily denied the rehearing without comment or opinion!

14. I find myself in a position that, having followed the dictum of the highest Court in the land, I am being punished by the IRS for so doing. This is all out of joint! The IRS's dispute is clearly with the Supreme Court -- I am forced to be the "whipping boy" in this dispute!

15. During this degrading process I have been doubly punished with rapidly deteriorating health. I have rapidly worsening Diabites Mellitus, have become totally blind in one eye, am rapidly losing the sight in the other eye, am further afflicted with spinal arthritis and osteitis, with frequent chronic severe headaches and nausea requiring cervical traction, continuous severe chronic allergic rhinitis.

16. Adverse publicity, deliberately distorted by the IRS, has so impaired my practice that, contrary to the lies

of the prosecutor and probation officers, I am unable to adequately support my wife and children (8). I have no property, I own neither house (or equity in a house), nor do I own any automobiles. I have been drained financially to the point that I am in serious straits, without future potential to satisfy my creditors, let alone pay twenty thousand dollars in fines! By the prosecutor's and probation officer's wild exaggerations, outright lies, overestimations, the trial court was led to believe that I was capable of paying the exhorbitant fines imposed. NOTHING COULD BE FURTHER FROM THE TRUTH! I have been reduced, by protracted legal defense costs and adverse publicity, to a virtual pauper -- all for obeying the Supreme Court's dictum!

17. The lower courts have behaved in an arrogant, self-sufficient, tyrranical way, turning their backs upon the clear, unambiguous statement of this Honorable Court in regard to a good-faith, timely, assertion of the Constitutionally protected right against self incrimination.

18. I desire to resume filing of income tax forms, but am trapped in the corner with erroneous legal charges, afraid that some of the information they demand may be used to incriminate me. I humbly pray that this august body will seriously consider this crude petition for certiorari and, in mercy, aware of the horrendous legal injustices inflicted thus-far, dismiss the erroneous two charges against the defendant, or, at the very least, remand the case back to an unbiased court for proper retrial.

Respectfully submitted,

Dated May 2, 1977

Thomas W. Hoopes

Thomas W. Hoopes, Pro se

Subscribed and sworn to before me this 2 day of May, 1977

Notary Public

My Commission Expires:

CERTIFICATE OF MAILING

A copy of the foregoing Appendices, to be adjoined to the previously docketed Petition for a Writ of Certiorari, was posted in the U.S. Mail, postage prepaid, and addressed to the Assistant United States Attorney, Rodney G. Snow, Esq., 200 U.S. Post Office and Courthouse, Salt Lake City, Utah, 84101; also the Solicitor General, Washington, D.C. on the 6th day of May, 1977.

Thomas W. Hoopes